

***United States Court of Appeals
for the Second Circuit***



**PETITIONER'S
REPLY BRIEF**

75-4021

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

NATIONAL ASSOCIATION OF INDEPENDENT
TELEVISION PRODUCERS AND DISTRIBUTORS

WARNER BROTHERS, INC., COLUMBIA
PICTURES INDUSTRIES, INC., MGM
TELEVISION, UNITED ARTISTS
CORPORATION, MCA, INC. and
TWENTIETH CENTURY-FOX TELEVISION

SANDY FRANK PROGRAM SALES, INC.

WESTINGHOUSE BROADCASTING COMPANY,
INC.

CBS, INC.,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION
and THE UNITED STATES OF AMERICA,
Respondents,

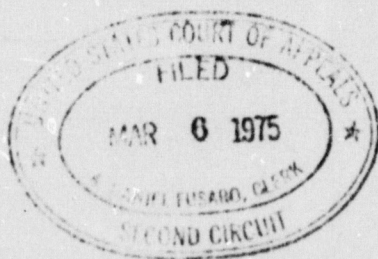
AMERICAN BROADCASTING COMPANIES, INC.
et al.

Intervenor.

Nos: 75-4021
75-4024
75-4025
75-4026

REPLY BRIEF OF PETITIONER

WESTINGHOUSE BROADCASTING COMPANY, INC.



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March 5, 1975

REPLY BRIEF OF PETITIONER
WESTINGHOUSE BROADCASTING COMPANY, INC.

A reading of the briefs of the Commission and NBC might lead this Court to believe that the exemptions which we now challenge were proposed by Group W. (Commission Brief, page 56; NBC Brief, page 7.) Such a conclusion would be incorrect. Not only is the cited passage from Group W's 1966 Comments in Docket No. 12782 taken out of its overall context, but, more importantly, it totally ignores how the Group W proposal was clarified in further pleadings in the same proceeding. There is also a lack of recognition of our numerous formal expressions of opposition to the type of exemptions now before this Court for review.

The proposed rule which Group W advanced in 1966 contemplated only limited ad hoc exemptions for non-regularly scheduled network programs which could not be scheduled in advance with any predictability. It did not extend to regularly scheduled network programs, nor did it suggest broad exemptions, based on program content. Rather, these ad hoc exemptions were intended solely for the benefit of the viewing public by permitting the networks some flexibility in offering special programs, where scheduling is beyond their control.

Group W has previously explained this position in some detail. In 1970, during the proceedings on reconsideration in Docket No. 12782, Group W specifically opposed any further expansion of the excluded categories of network programs beyond the limited categories originally included in the rule:

"Group W opposes the addition of any further categories of excluded programming. The network programs accorded special treatment are those types of programs which the networks find difficult or impossible to schedule in advance with any precision. Since regularly scheduled network news and public affairs programming do not present the same problem, special treatment is not required. ^{24/} Furthermore, there is a substantial danger that the exclusion of regularly scheduled network programming from the operation of the rule will so weaken the rule as to render it a nullity from a practical viewpoint."

"^{24/} While CBS argues that the original Westinghouse proposal contained a general exemption for news and public affairs programming, such is not the case. Group W's original proposal, by its terms, exempted only ad hoc news and public affairs programming, not regularly scheduled news and public affairs programming such as the nightly one-half hour network newscasts."

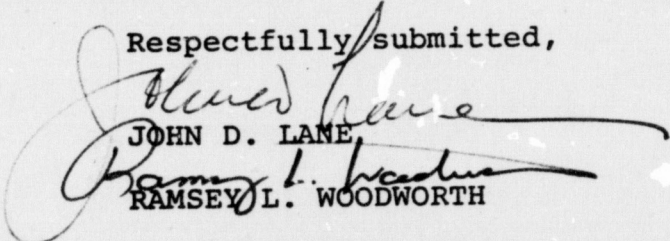
(Group W's Opposition to Petitions for Reconsideration, Docket 12782, filed July 2, 1970.)

Moreover, on ten specific occasions since that time, Group W has formally expressed its opposition (both with respect to specific requests for waiver of the rule and in the rule-making proceedings in Docket No. 19622) to the

type of exemptions now codified in the amended rule. */ Any suggestion that Group W has abruptly shifted its position . simply does not square with the record below.

We do not contest limited exemptions which are necessary to avoid undue and unnecessary disruptions where program scheduling or duration is beyond network control. Program content exemptions are based on an entirely different premise. Our objections thereto have been fully briefed.

Respectfully submitted,


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*/ This includes the following pleadings filed by Group W: (1) Comments on NBC Petition for Waiver, filed February 11, 1971; (2) Opposition to Petition of CBS for Waiver, filed April 12, 1971; (3) Opposition to MCA Petition for Rule Making, filed April 3, 1972; (4) Opposition to CBS Request for Waiver, filed July 18, 1972; (5) Petition for Reconsideration of Six Wives of Henry VIII Waiver, filed August 4, 1972; (6) Comments, Docket 19622, filed January 15, 1973; (7) Comments with respect to Petition of Children's Television Workshop for Waiver of Prime Time Access Rule, filed January 12, 1973; (8) Comments with respect to Petition of Mutual of Omaha Insurance Co. for Extension of Waiver of Prime Time Access Rule, filed February 1, 1973; (9) Comments with Respect to Petition of Hughes Television Network, et al. for Waiver of Prime Time Access Rule; and (10) Opposition to Extension of Waiver Policy, filed July 25, 1974.

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CERTIFICATE OF SERVICE

I do hereby certify that 2 copies of the "Reply Brief of Petitioner Westinghouse Broadcasting Company, Inc." have been served by United States mail, first class, postage pre-paid (or by hand where indicated) this 5th day of March 1975 upon the following:

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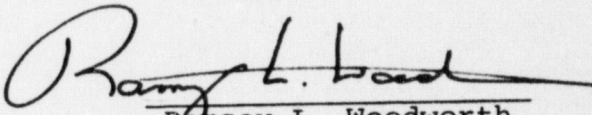
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